

REMARKS

Petition for Extension of Time Under 37 CFR 1.136(a)

It is hereby requested that the term to respond to the Examiner's Action of November 24, 2009 be extended three months, from February 24, 2010 to May 24, 2010.

The Commissioner is hereby authorized to charge the extension fee, and any additional fees associated with this communication to Deposit Account No. 50-4364.

In the Office Action, the Office indicated that claims 1 through 27 are pending in the application and the Office rejected all of the claims.

Rejections under 35 U.S.C. §§102 and 103

On page 2 of the Office Action, the Office rejected claims 1-9, 17, 19, and 24-27 under 35 U.S.C. §102(a) as being anticipated by PCT Publication No. WO 01/78319 to Ferguson et al. On page 8 of the Office Action, the Office rejected claims 10-16, 18, and 20-23 under 35 U.S.C. §103(a) as being unpatentable over Ferguson in view of European Patent No. EP 0794646 to Hild.

The Cited Prior Art Does Not Anticipate the Claimed Invention

The MPEP and case law provide the following definition of anticipation for the purposes of 35 U.S.C. §102:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) M.P.E.P. §2131.

The Claimed Invention

This application has a single independent claim, claim 1.

Claim 1 as currently pending reads as follows:

Method of automatically replicating data objects between a mobile device and a server, connected together via a wireless network, in which the timing of data replication across the network is determined by a network operator applying parameters that make efficient usage of network bandwidth; comprising:

creating a change log that lists all objects at the device and/or server to be replicated;

assigning, as a first of said parameters, a single weight associated with each object that defines how urgently that object needs to be replicated; and

assigning, as a second of said parameters, a threshold that is a function of time, with the single weight of each object being locally compared to the threshold at a given time and the outcome of the comparison determining whether the object is sent for replication or not at that time;

wherein all criteria that are relevant to how urgently an object needs to be replicated are represented by the single weight associated with that object.

Of particular relevance to present Office Action is the “assigning element” of the claim, where a single weight is associated with each object that defines how urgently that object needs to be replicated, and the final element of claim 1, directed to the fact that *all* criteria relevant to how urgently a particular object needs to be replicated are represented by that single weight.

WO 01/78319 (Ferguson)

Ferguson was cited by the Applicant in its Information Disclosure Statement (referred to by its PCT application no, that is, PCT/CA01/00486) and is described in the present application as an example of prior art that does not solve the problems solved by the claimed invention.

Reviewing in particular page 49, lines 5 - 17 and page 53, lines 21-23 of Ferguson (pages identified by the Office), Ferguson describes the use of criteria and configuration parameters when determining when to send messages that are stored as “pending messages”. Applicant

notes that these criteria and/or parameters are individually considered by the system. As Applicant notes on page 2 of the application as filed, there are significant problems with this approach:

“Different criteria [in Ferguson] can be employed to determine when messages are sent; (e.g., maximum message size, maximum time reached, specific type of message, destination address, content identifiers, time of day etc). To evaluate whether a given message should be transmitted would require specific algorithms to be run relating to each criteria and potentially complex clashes to be resolved. Where evaluation occurs on a mobile device, with inevitable power constraints, the challenge is to minimize power consumption (e.g. processor cycles needed to complete a task).”

In other words, in Ferguson, each, i.e., *all* of the criteria are used to represent how urgently an object needs to be transmitted, and with this approach comes all of the complex processing issues described above. By way of contrast, the claimed invention uses a *single* criteria, i.e., the single weight assigned individually to each object, to determine how urgently an object needs to be replicated. There is nothing in Ferguson that teaches or suggests that, instead of there being many different criteria that represent how urgently an object needs to be replicated, there should just be a single one as is claimed herein in claim 1.

Claim 1 is thus not anticipated by Ferguson, and thus, the dependent claims are also not anticipated by Ferguson.

A Prima Facie Case of Obviousness Has Not Bee Established

KSR (*KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007)) requires that the Office provide “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness.” Further, the Office must “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in

the way the claimed new invention does,” In addition, the Office must make “explicit” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.”

All the remaining claims are dependent on claim 1 and therefore are novel over Ferguson. The addition of Hild does not teach or suggest the elements above that are identified as not being found in Ferguson (and the Office has not asserted that it does). Thus, all of the claims patentably define over Ferguson and/or Hild, both alone or in combination.

Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of claims 10-16, 18, and 20-23 under 35 USC §103.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any fees associated with this communication to applicant's Deposit Account No. 50-4364.

Respectfully submitted

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Date

/Mark D. Simpson/
Mark D. Simpson, Esquire
Registration No. 32,942

SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2189
Telephone: 215 972 7880
Facsimile: 215 972 4169
Email: MSimpson@saul.com